

BILL NO. G-74-03-35

GENERAL ORDINANCE NO. G- 07-74

AN ORDINANCE prohibiting the Distribution
of exhibition of Obscene Matter or Performances

BE IT ORDAINED BY THE COMMON COUNCIL OF THE CITY OF FORT
WAYNE, INDIANA:

SECTION 1. Obscene^F Matters and Performances

For purpose of this Ordinance:

(a) "Matter" means any book magazine, newspaper, or printed or
written material or any picture, drawing, photograph, motion picture, or other
pictorial representation or any statue or other figure, or any recording,
transcription, or mechanical, chemical or electrical reproduction or any other
articles, equipment, machines or materials.

(b) "Performance" means any play, motion picture, dance or other
exhibition or presentation, whether pictured, animated or live, performed
before an audience of one or more persons.

(c) Any matter or performance is obscene if: (i) the average person,
applying contemporary community standards, finds that the matter of performance
taken as a whole, appeals to the prurient interest, and (ii) the matter of
performance depicts or describes in a patently offensive way, sexual conduct,
normal or perverted, actual or simulated, and (iii) the matter or performance tak^{ing}
as a whole, lacks serious literary, artistic, political or scientific value.

(d) "Sexual conduct" means acts of masturbation, excretory functions,
lewd exhibition of the genitals, sadomasochistic abuse, homosexuality, lesbianism
bestiality, sexual intercourse or physical contact with a person's clothed or un-
clothed genitals, pubic area, buttocks, or the breast or breasts of a female for
the purpose of sexual stimulation, gratification, or perversion.

(e) "Sado-masochistic abuse" means flagellation or torture by or upon
a person as an act of sexual stimulation or gratification.

(f) "Person" means any individual, partnership, firm, association,
corporation or other legal entity.

(g) "Distribute" means to transfer possession of, whether with or without
consideration.

1
2
3
4
5
(D) - 6 (h) "Knowingly" means knowing or having good reason to know or having
7 such constructive knowledge as would constitute knowing, the character of the
8 matter or performance.

9 (i) "Owner" means any person who owns or has legal right to possession
10 of any matter.

11 (j) "City" means City of Fort Wayne, Indiana.

12 SECTION 2. Every person who knowingly sends or causes to be
13 sent, or brings or causes to be brought, into the City for sale or distribution, or
14 in this City possesses, prepares, publishes or prints, with intent to distribute
15 or to exhibit to another, or who offers to distribute, distributes, or exhibits to
16 another any obscene matter is guilty of a misdemeanor. ^{EAOR}

(EAOR) SP- 17 SECTION 3. Every person who knowingly engages or participates
18 in, manages, produces, sponsors, presents or exhibits any obscene performance
19 is guilty of a misdemeanor.

20 SECTION 4. Defenses. It shall be an affirmative defense to a
21 prosecution under this Ordinance for the defendant to show:

22 (a) That the act was done for legitimate scientific or educational purposes;

23 SECTION 5. Where the subject matter is offered for distribution to
24 the public as stock in trade or a lawful business or activity, or as in the case of
25 films, is exhibited at a commercial theater showing regularly scheduled performance
26 to the general public, no person shall be arrested for a violation of any of the
27 provisions of the Ordinance unless the arresting officer shall have first obtained an
28 arrest warrant, and no property shall be seized as evidence unless a search
29 warrant shall have first been obtained pursuant to the provisions of this
30 chapter; Provided, however, that the quantity of matter seized shall encompass no
31 more than is reasonable and necessary for the purpose of obtaining evidence.

(D) SP- 32 SECTION 6 At any time after seizure, or the obtaining of evidence
33 by purchase, and prior to arrest, the City, defendant, owner, or other party
34 in interest of any matter seized or purchased may apply for and obtain a prompt
35 adversary hearing for the purpose of obtaining a preliminary determination of
36 obscenity. Said hearing for preliminary determination of obscenity is to be
37 held promptly and without the intervention of a jury, said restriction applying
38 only to the preliminary determination and in no way affecting the defendant's
39 right to a jury trial. If evidence has been obtained by purchase, the court shall
40 direct the clerk of the court to issue notice to the defendant informing the person
41 of the availability of a prompt adversary hearing prior to the issuance of a
42 warrant of arrest. If the court determines at a said hearing that the material is
43 obscene, the matter shall be held as evidence and a warrant of arrest may
44 be issued for the arrest of the defendant. Provided, further, if the defendant,

1
2
3
4 owner or other party in interest of any matter seized or purchased shall not apply
5 for a prompt adversary hearing within five (5) days after the seizure occurs
6 or when seven (7) days after notice is issued by the court, an arrest warrant
7 may be issued for the arrest of the defendant. In the case of films or motion
8 pictures, at any time after seizure and prior to trial or any adversary hearing
9 for the purpose of obtaining a preliminary determination of obscenity, the defend-
10 ant or owner of any matter seized may apply for and, upon a showing that other
11 copies of the film or motion picture are not available to be exhibited, the court
12 shall order that the applicant be permitted to copy the film or picture, at his
13 own expense, so that showing can be continued pending a judicial determination
14 of obscenity in an adversary hearing.

15
16 SECTION 7. Any person who violates any of the provisions of this
17 Ordinance shall be guilty of a misdemeanor, and shall upon conviction, be fined
18 in any amount not to exceed One Thousand Dollars (\$1,000.00) and, may be
19 imprisoned for any period not to exceed six (6) months.

20
21 SECTION 8. If any provision or clause of the Ordinance, or its
22 application to any person or circumstance is held invalid, the
23 invalidity does not affect other provisions or applications, of this ordinance
24 and to this end the provisions of each section are declared to be severable.

25
26 SECTION 9. This Ordinance shall be in full force and effect from
27 and after its passage, approval by the Mayor and legal publication thereof.

28
29 Winfield C. Moses, Jr.
30 Councilman
31
32
33
34
35

1
2
3
4 BILL NO. G-74-03-35

5 ORDINANCE NO. G-74-_____

6 AN ORDINANCE prohibiting the Distribution
7 of exhibition of Obscene Matter or Performances

8 BE IT ORDAINED BY THE COMMON COUNCIL OF THE CITY OF FORT
9 WAYNE, INDIANA:

10 SECTION 1. Obscene Matters and Performances.

11 For purpose of this Ordinance:

12 (a) "Matter" means any book, magazine, newspaper, or printed or written
13 material or any picture, drawing, photograph, motion picture, or other pictorial
14 representation or any statue or other figure, or any recording, transcription, or
15 mechanical, chemical or electrical reproduction or any other articles, equipment,
16 machines or materials.

17 (b) "Performance" means any play, motion picture, dance or other exhibi-
18 tion or presentation, whether pictured, animated or live, performed before an
19 audience of one or more persons.

20 (c) Any matter or performance is obscene if: (i) the average person,
21 applying contemporary community standards, finds that the matter of performance
22 taken as a whole, appeals to the prurient interest, and (ii) the matter of perfor-
23 mance depicts or describes in a patently offensive way, sexual conduct, normal
24 or perverted, actual or simulated, and (iii) the matter or performance taken as
25 a whole, lacks serious literary, artistic, political or scientific value.

26 (d) "Sexual conduct" means acts of masturbation, excretory functions,
27 lewd exhibition of the genitals, sadomasochistic abuse, homosexuality, lesbianism,
28 bestiality, sexual intercourse or physical contact with a person's clothed or un-
29 clothed genitals, pubic area, buttocks, or the breast or breasts of a female for
30 the purpose of sexual stimulation, gratification, or perversion.

31 (e) "Sado-masochistic abuse" means flagellation or torture by or upon a
32 person as an act of sexual stimulation or gratification.

33 (f) "Person" means any individual, partnership, firm, association,
34 corporation or other legal entity.

35 (g) "Distribute" means to transfer possession of, whether with or without
consideration.

(h) "Knowingly" means knowing or having good reason to know or having
such constructive knowledge ^{as} ~~and~~ would constitute knowing, the character of the
matter or performance.

(i) "Owner" means any person who owns or has legal right to possession
of any matter.

(j) "City" means City of Fort Wayne, Indiana.

SECTION 2. Every person who knowingly sends or causes to be sent, or brings or causes to be brought, into this City for sale or distribution, or in this City possesses, prepares, publishes or prints, with intent to distribute or to exhibit to another, or who offers to distribute, distributes, or exhibits to another any obscene matter is guilty of a misdemeanor.

SECTION 3. Every person who knowingly engages or participates in, manages, produces, sponsors, presents or exhibits any obscene performance is guilty of a misdemeanor.

SECTION 4. Defenses. It shall be an affirmative defense to a prosecution under this chapter for the defendant to show:

(a) That the act was done for legitimate scientific or educational purposes;


SECTION 5. Where the subject matter is offered for distribution to the public as stock in trade or a lawful business or activity, or as in the case of films, is exhibited at a commercial theater showing regularly scheduled performances to the general public, no person shall be arrested for a violation of any of the provisions of this chapter unless the arresting officer shall have first obtained an arrest warrant, and no property shall be seized as evidence unless a search warrant shall have first been obtained pursuant to the provisions of this chapter; Provided, however, that the quantity of matter seized shall encompass no more than is reasonable and necessary for the purpose of obtaining evidence.

SECTION 6. At any time after seizure, or the obtaining of evidence by purchase, and prior to arrest, the City, defendant, owner, or other party in interest of any matter seized or purchased, may apply for and obtain a prompt adversary hearing for the purpose of obtaining a preliminary determination of obscenity. Said hearing for preliminary determination of obscenity is to be held promptly and without the intervention of a jury, said restriction applying only to the preliminary determination and in no way affecting the defendant's right to a jury trial. If evidence has been obtained by purchase, the court shall direct the clerk of the court to issue notice to the defendant informing the person of the availability of a prompt adversary hearing prior to the issuance of a warrant of arrest. If the court determines at said hearing that the material is obscene, the matter shall be held as evidence and a warrant of arrest may be issued for the arrest of the defendant. Provided, further, if the defendant, owner or other party in interest of any matter seized or purchased shall not apply for a prompt adversary hearing within five (5) days after the seizure occurs or within seven (7) days after notice is issued by the court, an arrest warrant may be issued for the arrest of the defendant. In the case of films or motion pictures, at any time after seizure and prior to trial or any adversary hearing for the purpose of obtaining a preliminary determination of obscenity, the defendant or owner of any matter seized may apply for and, upon a showing that other copies of the film or motion picture are not available to be exhibited, the court shall order that the applicant be permitted to copy the film or motion picture, at his own expense, so that showing can be continued pending a judicial determination of obscenity in an adversary hearing.

SECTION 7. Any person who violates any of the provisions of this Chapter shall be guilty of a misdemeanor, and shall upon conviction, be fined in any amount not to exceed Five Hundred Dollars (\$500.00) and, may be imprisoned for any period not to exceed six (6) months.

SECTION 8. If any provision or clause of this Ordinance, or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications, of this ordinance and to this end the provisions of each section are declared to be severable.

SECTION 9. This Ordinance shall be in full force and effect from and after its passage, approval by the Mayor and legal publication thereof.


Councilman

Read the first time in full and on motion by Kraus, seconded by V. Schmitt, and duly adopted, read the second time by title and referred to the Committee on Committee of the Whole (and the City Plan Commission for recommendation) and Public Hearing to be held after due legal notice, at the Council Chambers, City-County Building, Fort Wayne, Indiana, on _____, the _____ day of _____, 197____, at _____ o'clock P.M., E.S.T.

Date: 3-26-74

Charles W. Blustein
CITY CLERK

Read the third time in full and on motion by Kraus, seconded by Hinga, and duly adopted, placed on its passage. Passed (~~lost~~) by the following vote:

	AYES <u>9</u>	NAYS <u>0</u>	ABSTAINED _____	ABSENT _____	to-wit:
BURNS	<u>X</u>	_____	_____	_____	_____
HINGA	<u>X</u>	_____	_____	_____	_____
KRAUS	<u>X</u>	_____	_____	_____	_____
MOSES	<u>X</u>	_____	_____	_____	_____
NUCKOLS	<u>X</u>	_____	_____	_____	_____
SCHMIDT, D.	<u>X</u>	_____	_____	_____	_____
SCHMIDT, V.	<u>X</u>	_____	_____	_____	_____
STIER	<u>X</u>	_____	_____	_____	_____
TALARICO	<u>X</u>	_____	_____	_____	_____

DATE: 4-9-74

Charles W. Blustein
CITY CLERK

Passed and adopted by the Common Council of the City of Fort Wayne, Indiana, as (~~Zoning Map~~) (~~General~~) (~~Annexation~~) (~~Special~~) (~~Appropriation~~) Ordinance, (~~Resolution~~) No. 5-07-74 on the 9th day of April, 1974.

ATTEST: (SEAL)

Charles W. Blustein
CITY CLERK

Samuel J. Talarico
PRESIDENT OFFICER

Presented by me to the Mayor of the City of Fort Wayne, Indiana, on the 10th day of April, 1974, at the hour of 4:30 o'clock P. M., E.S.T.

Charles W. Blustein
CITY CLERK

Approved and signed by me this 10 day of April, 1974, at the hour of 10:30 o'clock P M., E.S.T.

Edward G. Kammerer
MAYOR

Heald
4/9/74

Bill No. G-74-03-35

REPORT OF THE COMMITTEE ON COMMITTEE OF THE WHOLE

We, your Committee on Committee of the Whole to whom was referred an Ordinance
PROHIBITING THE DISTRIBUTION OF EXHIBITION OF OBSCENE MATTER
OR PERFORMANCES

have had said Ordinance under consideration and beg leave to report back to the Common

Council that said Ordinance Do PASS.

Eugene Kraus, Jr.
James S. Stier

Vivian G. Schmidt
John Nuckols
DONALD J. Schmidt

William T. Hinga
Paul M. Burns

Winfield C. Moses, Jr.
Samuel J. Talarico

Vivian G. Schmidt

DS Schmidt

William T. Hinga

Paul M. Burns

Samuel J. Talarico

DATE 4-9-74 CONCURRED IN
CHARLES W. WESTERMAN, CITY CLERK

City Clerk Memorandum

CHARLES W. WESTERMAN, Clerk

To John Logan, City Council Attorney Date May 2, 1974
From Charles W. Westerman, City Clerk
Subject General Ordinance #G-07-74

COPIES TO:

After completing the perusal of Bill #G-74-03-35, General Ordinance G-07-74, an ordinance prohibiting the distribution or exhibition of obscene matters or performances. Said request to the City Clerk to peruse and to obtain legality relating to a number of typographical errors found in said General Ordinance passed by the Common Council on April 9, 1974, and legally signed into law by the acting Mayor, Edward G. Kamnikar, on April 10, 1974, at 10:30 P.M. and attested by Charles W. Westerman, City Clerk.

I am writing to you and to the City Attorney, David B. Keller, for the legal steps to correct said errors that the original ordinance had included at the time of its passage.

Said ordinance was received by the Clerk, from the Council Attorney and said ordinance corrections regarding errors prior to its passage through legal attorney action.

Said errors remain in the passed bill and my inquiry and legal rulings, request as to what effect these errors might play in the full enforcement and institution of this ordinance

The following errors are noted and possibly more might be found by a more qualified legal scrutiny.

Charlie Westerman

PAGE #1

CORRECTIONS!

line 8 copy: of exhibition of Obscene Matter or Performançães
 correction: or exhibition of Obscene Matter or Performances

line 11 copy: Obscenc
 correction: Obscene

line 19½ copy: of performance
 correction; or performance

line 20 copy: (ii) the matter of
 correction: (ii) the matter or

line 21 copy: tak
 correction: taken

PAGE #2

line 5½ copy: to know or haveing
 correction: to know or having

line 6 copy: such constructive knowlege
 correction: such constructive knowledge

line 13 copy: guilty of a misdemenaoir.
 correction: guilty of a misdemeanor.

line 25 copy: by purchase, and prior to arrest, the City defendant,
 correction: by purchase, and prior to arrest, the City, defendant,

line 25½ copy: in interest of any matter seized or purchase,
 correction: in interest of any matter seized or purchased,

PAGE #3

line 11½ copy: One Thousand Dollars (1,000.00)
 correction: One Thousand Dollars (\$1,000.00)

DIGEST SHEET

TITLE OF ORDINANCE General Ordinance G-74-03-35

DEPARTMENT REQUESTING ORDINANCE Winfield C. Moses, Jr. - Councilman

SYNOPSIS OF ORDINANCE Phohibiting the distribution or exhibition of obscene matters
or performances.

EFFECT OF PASSAGE Governing obscene matter of ordinance

EFFECT OF NON-PASSAGE Non-Governing obscene matter of ordinance

MONEY INVOLVED (DIRECT COSTS, EXPENDITURES, SAVINGS) _____

ASSIGNED TO COMMITTEE (PRESIDENT) Regulation Committee of the whole



CITY OF FORT WAYNE

FORT WAYNE, INDIANA

**CHARLES W. WESTERMAN
CITY CLERK**

April 11, 1974

Miss Helen Libbing
Fort Wayne Newspapers, Inc.
600 West Main Street
Fort Wayne, Indiana 46802

Dear Miss Libbing:

Please give the attached full coverage on the dates of April 13 and April 20, 1974, in both the News Sentinel and Journal Gazette.

RE: Legal Notice for the
Common Council of Fort Wayne,
Indiana:
Bill No. Z-73-12-12
Bill No. Z-74-01-10
Bill No. Z-73-12-10
Bill No. Z-73-06-11
Bill No. G-74-03-35

Please send us four (4) copies of the Publisher's Affidavit.

Thank you.

Sincerely,

Charles W. Westerman
City Clerk

CWW/ne
Encl: 5.

Notice is hereby given that on the 9th day of April, 1974, the Common Council of the City of Fort Wayne, Indiana, in a Regular Session did pass the following Bill No. G-74-63-34 G-74-74 General Ordinance to-wit:

BILL NO. G-74-63-34

GENERAL ORDINANCE NO. G-74-74

AN ORDINANCE prohibiting the Distribution or exhibition of Obscene Matter or Performances

BE IT ORDAINED BY THE COMMON COUNCIL OF THE CITY OF FORT WAYNE, INDIANA:

SECTION 1. Obscene Matters and Performances For purpose of this Ordinance:

(a) "Matter" means any book, magazine, newspaper, or printed or written material or any picture, drawing, photograph, motion picture, or other pictorial representation or any statue or other figure or any recording, transcription, or mechanical, chemical or electrical reproduction of any other articles, equipment, machines or material.

(b) "Performance" means any play, motion picture, dance or other exhibition or presentation, whether pictures, animated or live, performed before an audience of one or more persons.

(c) Any matter or performance is obscene if: (i) the average person, applying contemporary community standards, finds that the matter of performance taken as a whole, appeals to the prurient interest, and (ii) the matter of performance depicts or describes in a patently offensive way, sexual conduct normal or perverted, actual or simulated, and (iii) the matter or performance taken as a whole, lacks serious literary, artistic, political or scientific value.

(d) "Sexual conduct" means acts of masturbation, excretory functions, lewd exhibition of the genitals, sadomasochistic abuse, homosexuality, bestiality, sexual intercourse or physical contact with a person, buttocks, or the breast or breasts of a female for the purpose of sexual stimulation, gratification, or perversion.

(e) "Sadomasochistic abuse" means (i) coercion or torture by or upon a person, (ii) coercion or sexual stimulation or gratification.

(f) "Person" means any individual, partnership, firm, association, corporation or other legal entity.

(g) "Distribute" means to transfer possession of, whether with or without consideration.

(h) "Knowing" means knowing or having good reason to know or having such constructive knowledge as would constitute knowing, the character of the matter or performance.

(i) "Owner" means any person who owns or has legal right to possession of any matter.

(j) "City" means City of Fort Wayne, Indiana.

SECTION 2. Every person who knowingly sends or causes to be sent or brings or causes to be brought, into the City for sale or distribution, or in his City possesses, prepares, publishes or prints, with intent to distribute or to exhibit to another, or who offers to distribute, distributes, or exhibits to another any obscene matter is guilty of a misdemeanor.

SECTION 3. Every person who knowingly engages or participates in, promotes, produces, sponsors, presents or exhibits any obscene performance is guilty of a misdemeanor.

SECTION 4. Defenses. It shall be an affirmative defense to a prosecution under this Ordinance for the defendant to show: (a) That the act was done for legitimate scientific or educational purposes;

SECTION 5. Where the subject matter is offered for distribution to the public as stock in trade or a lawful business or activity, or as in the case of films, is exhibited at a commercial theater showing regularly scheduled performance to the general public, no person shall be arrested for a violation of any of the provisions of the Ordinance unless the arresting officer shall have first obtained an arrest warrant, and no property shall be seized as evidence unless a search warrant shall have first been obtained pursuant to the provisions of this chapter. Provided, however, that the publicity of matter seized shall encompass no more than is reasonable and necessary for the purpose of obtaining evidence.

SECTION 6. In any time after seizure, or the obtaining of evidence by purchase, and prior to arrest, the City defendant, owner or other party in interest of any matter seized or purchase, may apply for and obtain a prompt adversary hearing for the determination of obscenity. Said hearing for preliminary determination of obscenity is to be held promptly and without the intervention of a jury, said restriction applying only to the preliminary determination and in no way affecting the defendant's right to a jury trial. If evidence has been obtained by purchase, the court shall direct the clerk of the court to issue notice to the defendant informing the person of the availability of a prompt adversary hearing prior to the issuance of a warrant of arrest. If the court determines of a said hearing that the material is obscene, the matter shall be held as evidence and a warrant of arrest may be issued for the arrest of the defendant. Provided, further, if the defendant, owner or other party in interest of any matter seized or purchased shall not apply for a prompt adversary hearing within five (5) days after the seizure occurs or when seven (7) days after notice is issued by the court, an arrest warrant may be issued for the arrest of the defendant. In the case of films or motion pictures, at any time after seizure and prior to trial or any adversary hearing for the purpose of obtaining a preliminary determination of obscenity, the defendant, owner or any matter seized may apply for and, upon a showing that other copies of the film cannot be obtained, the court shall be permitted to copy the film or picture, at its own expense, so that showing can be continued pending a judicial determination of obscenity in an adversary hearing.

SECTION 7. Any person who violates any of the provisions of this Ordinance shall be guilty of a misdemeanor, and shall upon conviction, be fined in any amount not to

exceed one Thousand Dollars (1,000.00) and may be imprisoned for any period not to exceed six (6) months.

SECTION 8. If any provision or clause of the Ordinance, or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications, of this ordinance and to this end the provisions of each section are declared to be severable.

SECTION 9. This Ordinance shall be in full force and effect from and after its passage, approved by the Mayor and legal publication thereof.

Winfield C. Moses, Jr., Councilman.

Read the third time in full and on motion by Krous, seconded by Hingo, and duly approved by the Common Council, PASSED by the following vote:

Yeas: Nine; Nays: Hingo, Krous, Messers, Nuckolls, D. Schmidt, V. Schmidt, Slater, Tocco.

Yeas: None.

Dates: 4-7-74.

Charles W. Westerman, City Clerk.

Passed and adopted by the Common Council of the City of Fort Wayne, Indiana as General Ordinance No. G-74-63-34 on the 9th day of April, 1974.

ATTEST: (SEAL)

Samuel C. Karcia, Presiding Officer.

Charles W. Westerman, City Clerk.

Present: Charles W. Westerman, City Clerk, President; Charles W. Westerman, City Clerk, City Controller of the City of Fort Wayne, Indiana, on the 10th day of April, 1974, at the hour of 11:30 o'clock A.M., E.S.T.

Charles W. Westerman, City Clerk.

Approved and signed by me this 10th day of April, 1974, at the hour of 10:30 o'clock P.M., E.S.T.

Edward G. Kamniker, City Controller.

I, Charles W. Westerman, Clerk of the City of Fort Wayne, Indiana, do hereby certify that the above and foregoing is a full and complete copy of General Ordinance No. G-74-63-34 passed by the Common Council on the 9th day of April, 1974, and that said Ordinance was duly signed and approved by the City Controller on the 10th day of April, 1974 and now remains on file and on record in my office.

WITNESS my hand, and the official seal of the City of Fort Wayne, Indiana, this 11th day of April, 1974.

Charles W. Westerman, City Clerk.

4-12-74

Board of Accounts

General Form No. 99 P (Rev 1967)

Council
Unit)

To NEWS-SENTINEL Dr.

County, Ind.

FORT WAYNE, INDIANA

PUBLISHER'S CLAIM

(Must not exceed two actual lines, neither of which shall total more than four solid lines of the type in which the body of the advertisement is set) number of equivalent lines

er of lines

er of lines

er of lines

number of lines in notice

ES

columns wide equals 222 equivalent lines at .288¢ per line

arge for notices containing rule or tabular work (50 per cent of above

tra proofs of publication (50 cents for each proof in excess of two)

AL AMOUNT OF CLAIM

COST

le column 11 ems

Size of type 5 1/2 point

sertions 2

Size of quad upon which type is cast 5 1/2

and penalties of Ch. 89, Acts 1967.

foregoing account is just and correct, that the amount claimed is legally due, after allowing all just of the same has been paid.

V. E. Gerken

19 74

Title Clerk

PUBLISHER'S AFFIDAVIT

State of Indiana

Allen County as

Personally appeared before me, a notary public in and for said county and state, the undersigned, V. E. Gerken

that S he is Clerk

NEWS-SENTINEL

a DAILY newspaper of general circulation printed and published

in the English language in the city of FORT WAYNE, INDIANA

in state and county aforesaid, and that the printed matter attached hereto is a true copy, which was duly published in said paper for two

time 8 the dates of publication being

as follows:

4/13-20/74

Subscribed and sworn to before me this 22nd day of April 19 74

Notary Public

My commission expires March 11, 1978

Fort Wayne Common Council
(Governmental Unit)To NEWS-SENTINEL Dr.Allen County, Ind.FORT WAYNE, INDIANA

PUBLISHER'S CLAIM

LINE COUNT

Display Matter (Must not exceed two actual lines, neither of which shall total more than four solid lines of the type in which the body of the advertisement is set)
— number of equivalent lines

Head number of lines

Body number of lines

Tail number of lines

Total number of lines in notice

221

1

222

COMPUTATION OF CHARGES

222 lines 1 columns wide equals 222 equivalent lines at .288¢
cents per line79.49

Additional charge for notices containing rule or tabular work (50 per cent of above amount)

Charge for extra proofs of publication (50 cents for each proof in excess of two)

1.00

TOTAL AMOUNT OF CLAIM

80.49

DATA FOR COMPUTING COST

Width of single column 11 ems

Size of type 5½ pointNumber of insertions 2Size of quad upon which type is cast 5½

Pursuant to the provision and penalties of Ch. 89, Acts 1967,

I hereby certify that the foregoing account is just and correct, that the amount claimed is legally due, after allowing all just credits, and that no part of the same has been paid.

V. E. GerkenDate April 22, 1974Title Clerk

PUBLISHER'S AFFIDAVIT

State of Indiana

ALLEN County ss:Personally appeared before me, a notary public in and for said county and state, the undersigned, V. E. Gerkenthat She is Clerk of theNEWS-SENTINELDAILYa newspaper of general circulation printed and published in the English language in the city of FORT WAYNE, INDIANAin state and county aforesaid, and that the printed matter attached hereto is a true copy, which was duly published in said paper for twotime, 8 the dates of publication being as follows:4/13-20/74Subscribed and sworn to before me this 22nd day of April, 1974

Notary Public

My commission expires March 11, 1978

Classified

COPY OF
NOT HERE

APPROVED AND SIGNED BY ME THIS 10th DAY OF APRIL, 1974, AT THE HOUR OF 10:30 o'clock M., E.S.T.

Edward G. Kamnikor, City Controller,
Charles W. Westernman, Clerk of the City of Fort Wayne, Indiana, do hereby certify that the above and foregoing is a full, true and complete copy of General Ordinance No. G-07-74 passed by the Common Council on the 9th day of April, 1974, and that said Ordinance was duly signed and approved by the City Controller on the 10th day of April, 1974 and now remains on file and on record in my office.

WITNESS my hand, and the official seal of the City of Fort Wayne, Indiana, this 10th day of April, 1974.

Charles W. Westernman, City Clerk,

13-20.

BILL No. G-74-85-34

GENERAL ORDINANCE NO. G-74-74

AN ORDINANCE prohibiting the distribution or exhibition of Obscene Matter or Performances

BE IT ORDAINED BY THE COMMON COUNCIL OF THE CITY OF FORT WAYNE, INDIANA:

SECTION 1. Obscene Matters and Performances For purpose of this Ordinance:

(a) "Matter" means any book, magazine, newspaper, or printed or written material or any picture, drawing, photograph, motion picture, or other pictorial representation or any statue or other figure, or any recording, transcription, or mechanical, chemical or electrical reproduction of any other articles, equipment, machines or materials.

(b) "Performance" means any play, motion picture, dance or other exhibition or presentation, whether pictured, animated or live, performed before an audience of one or more persons.

(c) Any matter or performance is obscene if: (i) the average person, applying contemporary community standards, finds that the matter of performance taken as a whole, appeals to the prurient interest, and (ii) the matter of performance depicts or describes in a patently offensive way, sexual conduct normal or perverted, actual or simulated, and (iii) the matter or performance taken as a whole, lacks serious literary, artistic, political or scientific value.

(d) "Sexual conduct" means acts of masturbation, excretory functions, lewd exhibition of the genitals, sodomistic abuse, homosexuality, lesbianism, bestiality, sexual intercourse or physical contact with a person clothed or unclothed, genital, pubic area, buttocks, or the breast or breasts of a female for the purpose of sexual stimulation, gratification, or perversion.

(e) "Sodoministic abuse" means flagellation or torture by or upon a person as an act of sexual stimulation or gratification.

(f) "Person" means any individual, partnership, firm, association, corporation or other legal entity.

(g) "Distribute" means to transfer possession of, whether with or without consideration.

(h) "Knowing" means knowing or having good reason to know or having such constructive knowledge as would constitute knowing the character of the matter or performance.

(i) "Owner" means any person who owns or has legal right to possession of any matter.

(j) "City" means City of Fort Wayne, Indiana.

SECTION 2. Every person who knowingly sends or causes to be sent, or brings or causes to be brought, into the City for sale or distribution, or in this City possesses, prepares, publishes or prints, with intent to distribute or to exhibit to another, or who offers to distribute, distribute, or exhibits to another any obscene matter is guilty of a misdemeanor.

SECTION 3. Every person who knowingly entices or participates in, manages, produces, sponsors, presents, or exhibits any obscene performance is guilty of a misdemeanor.

SECTION 4. Defense. It shall be an affirmative defense to a prosecution under this Ordinance for the defendant to show:

(a) That the act was done for legitimate scientific or educational purposes;

SECTION 5. Where the subject matter is offered for distribution to the public as stock in trade or a lawful business or activity, or as in the case of films, is exhibited at a commercial theater showing regularly scheduled performance to the general public no person shall be arrested for a violation of any of the provisions of the Ordinance unless the arresting officer shall have first obtained an arrest warrant, and no property shall be seized as evidence unless a search warrant shall have first been obtained pursuant to the provisions of this Ordinance. However, that the actual identity of matter seized shall encompass no more than is reasonable and necessary for the purpose of obtaining evidence.

SECTION 6. At any time after seizure, or the obtaining of evidence by purchase, and prior to arrest, the City defendant, owner, or other party in interest of any matter seized or purchased, may apply for and obtain a prompt adversary hearing for the purpose of obtaining a preliminary determination of obscenity. Said hearing for preliminary determination of obscenity is to be held promptly and without the intervention of a jury, said restriction applying only to the preliminary determination and is in no way affecting the defendant's right to a jury trial. If evidence has been obtained by purchase, the court shall direct the clerk of the court to issue notice to the defendant informing the person of the availability of a prompt adversary hearing prior to the issuance of a warrant of arrest. If the court determines at a said hearing that the material is obscene, the matter shall be held as evidence and a warrant of arrest may be issued for the arrest of the defendant. Provided, further, if the defendant, owner or other party in interest of any matter seized or purchased shall not apply for a prompt adversary hearing within five (5) days after the seizure occurs or when seven (7) days after notice is issued by the court, an arrest warrant may be issued for the arrest of the defendant. In the case of films or motion pictures, at any time after seizure and prior to trial or any adversary hearing for the purpose of obtaining a preliminary determination of obscenity, the defendant or other party in interest may apply for and, upon a showing that other copies of the film or motion picture are not available to be exhibited, the court shall order that the applicant be permitted to copy the film or picture, at his own expense, so that showing can be continued pending a judicial determination of obscenity in an adversary hearing.

SECTION 7. Any person who violates any of the provisions of this Ordinance shall be guilty of a misdemeanor, and shall upon conviction be fined in any amount not to exceed One Thousand Dollars (\$1,000.00) and may be imprisoned for any period not to exceed six (6) months.

SECTION 8. If any provision or clause of the Ordinance or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this ordinance and to this section, and the provisions of each section are declared to be severable.

SECTION 9. This Ordinance shall be in full force and effect from and after its passage, approval by the Mayor and legal publication thereof.

Winifred C. Moses, Jr., Councilman, Read the third time in full and on motion by Krous, seconded by Hinge, and duly adopted, placed on its passage, PASSED by the following vote:

Affirmed: Moses, Burns, Hinge, Krous, Moses, Nuckels, D. Schmidt, V. Schmidt, Stiler, Tolson.

Mays: None.

Dated: 4-24-74.

Charles W. Westerman, City Clerk, Passed and adopted by the Common Council of the City of Fort Wayne, Indiana on General Ordinance No. G-74-74 on the 9th day of April, 1974.

ATTEST: (SEAL)

Samuel J. Tolson, Presiding Officer, Charles W. Westerman, City Clerk, Presented by to the Acting Mayor, City Controller of the City of Fort Wayne, Indiana on the 10th day of April, 1974, at the hour of 11:00 o'clock A.M., E.S.T.

Charles W. Westerman, City Clerk, Approved and signed by me this 10th day of April, 1974, at the hour of 10:30 o'clock P.M., E.S.T.

Edward G. Kornikar, City Controller, I, Charles W. Westerman, Clerk of the City of Fort Wayne, Indiana, do hereby certify that the above and foregoing is a full and true and complete copy of General Ordinance No. G-74-74 passed by the Common Council on the 9th day of April, 1974, and that said Ordinance was duly signed and approved by the City Controller on the 10th day of April, 1974 and now remains on file and on record in my office.

WITNESS my hand and the official seal of the City of Fort Wayne, Indiana, this 11th day of April, 1974.

Charles W. Westerman, City Clerk, 4-13-20.

ate Board of Accounts

General Form No. 99 P (Rev. 1967)

on Council mental Unit)

To JOURNAL-GAZETTE Dr.

FORT WAYNE, INDIANA

County, Ind.

PUBLISHER'S CLAIM

ter (Must not exceed two actual lines, neither of which shall total more than four solid lines of the type in which the body of the advertisement is set) number of equivalent lines

number of lines

number of lines

221

number of lines

1

al number of lines in notice

222

RGES

es, 1 columns wide equals 222 equivalent lines at .288\$ its per line

\$ 79.49

charge for notices containing rule or tabular work (50 per cent of above

1.00

extra proofs of publication (50 cents for each proof in excess of two)

\$ 80.49

TAL AMOUNT OF CLAIM

IG COST

ngle column 11 ems

Size of type: 5 1/2 point

insertions 2

Size of quad upon which type is cast: 5 1/2

on and penalties of Ch. 89, Acts 1967,

e foregoing account is just and correct, that the amount claimed is legally due, after allowing all just of the same has been paid.

Arvilla DeWald

CLERK

Title _____

PUBLISHER'S AFFIDAVIT

State of Indiana Allen County } as:

Personally appeared before me, a notary public in and for said county and state, the undersigned ARVILLA DEWALD who, being duly sworn, says that she is _____ of the

CLERK

JOURNAL-GAZETTE

a DAILY newspaper of general circulation printed and published

In the English language in the city of FORT WAYNE, INDIANA

In state and county aforesaid, and that the printed matter attached hereto is a true copy, which was duly published in said paper for 2 time 8, the dates of publication being as follows:

4/13-20/74

Arvilla DeWald

Subscribed and sworn to before me this 22nd day of April 1974

Notary Public

My commission expires March 11, 1978

Fort Wayne Common Council
(Governmental Unit)

To JOURNAL-GAZETTE Dr.

Allen County, Ind.

FORT WAYNE, INDIANA

PUBLISHER'S CLAIM

LINE COUNT

Display Matter (Must not exceed two actual lines, neither of which shall total more than four solid lines of the type in which the body of the advertisement is set) — number of equivalent lines

Head number of lines

Body number of lines

Tail number of lines

Total number of lines in notice

221

1

222

COMPUTATION OF CHARGES

222 lines 1 columns wide equals 222 equivalent lines at .288¢ cents per line \$79.49

Additional charge for notices containing rule or tabular work (50 per cent of above amount)

1.00

Charge for extra proofs of publication (50 cents for each proof in excess of two)

TOTAL AMOUNT OF CLAIM

\$80.49

DATA FOR COMPUTING COST

Width of single column 11 ems

Size of type 5½ point

Number of insertions 2

Size of quad upon which type is cast 5½

Pursuant to the provision and penalties of Ch. 89, Acts 1967,

I hereby certify that the foregoing account is just and correct, that the amount claimed is legally due, after allowing all just credits, and that no part of the same has been paid.

Date April 22, 1974

Title CLERK

PUBLISHER'S AFFIDAVIT

State of Indiana }
Allen County } ss:

Personally appeared before me, a notary public in and for said county and state, the undersigned ARVILLA DEWALD who, being duly sworn, says that she is CLERK of the

JOURNAL-GAZETTE

a DAILY newspaper of general circulation printed and published

in the English language in the city of FORT WAYNE, INDIANA

in state and county aforesaid, and that the printed matter attached hereto is a true copy, which was duly published in said paper for 2 time 8, the dates of publication being as follows:

4/13-20/74

Subscribed and sworn to before me this 22nd day of April 1974

My commission expires March 11, 1978

Notary Public